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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1159 and 76-1416

ARTHUR F. QUERN, Acting Director, ILIINOIS DEPARTMENT OF PUBLIC AID, *et al.*,

Petitioners,

v.

VENUS MANDLEY, Individually and on Behalf of All Others Similarly Situated,

Respondents.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Petitioner,

v.

VENUS MANDLEY, Individually and on Behalf of All Others Similarly Situated,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

AMICUS CURIAE BRIEF OF THE STATE OF NEW JERSEY

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AMICUS CURIAE BRIEF OF THE STATE OF NEW JERSEY

Interest of the Amicus

The State of New Jersey is filing a separate *amicus curiae* brief in this matter because its outcome will unquestionably affect the State's ability, legislatively and administratively, to fashion within reasonable fiscal limits a public assistance program providing emergency relief in a manner most responsive to public needs. The decision of the United States Court of Appeals for the Seventh Circuit, which construed the Social Security Act to require an emergency assistance program far broader in coverage than that envisioned by Congress, promises to substantially undermine the necessary flexibility a state must have to fashion such assistance programs attuned to the immediate local climate. This is particularly true with respect to the nationwide relief ordered by the court, the most immediate effect of which could be the revocation by the Secretary of Health, Education and Welfare of his approval of New Jersey's emergency assistance program and the consequent loss of federal matching funds which are so vital to the continued operation of public assistance in the State.

Although New Jersey's limited fiscal resources do not permit it to provide every desirable public assistance service, the State has nonetheless fashioned an extensive and wide-ranging welfare program. This program, of which emergency assistance is an integral part, reflects difficult choices made by the duly elected representatives of the people in terms of evaluating and balancing the complex and competing needs of the poor. The choices made by the State respecting emergency assistance grants are difficult in that, within the limits of a fixed appropriation for that purpose, it must attempt to provide a meaningful amount of assistance to as broad a class of recipients as possible. It is precisely this dilemma, faced

by every state's elected officials in attempting to fashion responsive and remedial welfare assistance programs, that has moved the Court so many times to reaffirm and uphold the broad flexibility of the states to allocate their resources for social programs.

New Jersey has earmarked specified State and federal funds for emergency assistance to meet the most compelling needs of its citizens. Rather than utilizing these limited funds to provide a token payment in every conceivable emergency circumstance, the State has decided by regulation (N.J.A.C. 10:82-5.12) to provide meaningful assistance to those who find themselves facing imminent homelessness due to emergency circumstances. Shelter, food, and clothing are provided, as necessary, to people who suddenly find themselves in such a desperate situation.

This emergency assistance program, however, has come under legal challenge in the courts as inconsistent with the Social Security Act. Indeed, lawsuits challenging New Jersey's emergency assistance program, and raising issues similar to those presented in this case, are currently pending in the federal courts. *Gonzalez* v. *Young*, 418 F.Supp. 566 (D.N.J. 1976) vacated and remanded, —— F.2d—— (3d Cir. July 15, 1977); *Wise* v. *Klein*, Dkt. No. 76-274 (D.N.J., filed February 17, 1976). As already mentioned, New Jersey's program is also subject to possible challenge by the Secretary of Health, Education and Welfare as a result of the Seventh Circuit's decision in the instant matter. Thus, any decision by the Court in the present case will substantially, if not conclusively, impact on the outcome of the *Gonzalez* and *Wise* matters, future actions of the Secretary, and the validity of N.J.A.C. 10:82-5.12.

An affirmance of the court of appeals' decision may result in the imposition upon New Jersey by judicial de-

cree of an unduly broad welfare program which the State has determined, after considering the competing local concerns and needs, is not at the present time an appropriate allocation of available revenue resources. Alternatively, an affirmance may result in the State's withdrawal from the emergency assistance program due to its inability to fund a program of significantly broadened eligibility. Thus, it is clear that the State of New Jersey has a vital interest in preserving the authority of its Legislature, consistent with the Social Security Act, to fashion provisions for emergency assistance which are in accord with its views of proper allocation of State resources among the competing interests of the poor.

ARGUMENT

Section 406(e) of the Social Security Act does not require states participating in the program of "emergency assistance to needy families with children" to furnish assistance to all needy families with children to whatever extent is necessary to avoid destitution.

In 1968, Congress amended § 403 of the Social Security Act for the purpose of encouraging the states to institute plans providing emergency assistance to their citizens by pledging the following financial incentives:

> "(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—
>
> "(5) in the case of any State, an amount equal to 50 per centum of the total amount expended

> under the State plan during such quarter as emergency assistance to needy families with children" 42 U.S.C. § 603(a)(5).

The definition of "emergency assistance to needy families with children," for which Congress has offered 50% federal funding, is set forth in § 406(e) of the Social Security Act, 42 U.S.C. § 606(e):

> "(e)(1) The term 'emergency assistance to needy families with children' means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—
>
> "(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and
>
> "(B) such services as may be specified by the Secretary;

"but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

"(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate."

The State of New Jersey submits that this statute contains no mandatory eligibility criteria binding upon all states which participate in § 406(e) programs, but that it merely delineates the outer parameters within which federal moneys may be employed by the states to fund their individually tailored programs.

"The starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723, 756 (1975) (Powell, J., concurring). The statute begins with the phrase, "The term 'emergency assistance to needy families with children' means any of the following. . . ." It is at once apparent that this is merely a definitional section, designed to be read with § 403(a)(5). Section 406(e)(1) is not in nature or tone directory since it does not mandate the performance of any act or the undertaking of any duty. The statute merely permits a term of art, "emergency assistance to needy families with children," to be applied, for purposes of § 403(a)(5), to "any," but not necessarily "all," "of the following" items.

"Any of the following" refers clearly to § 406(e)(1)(A): "money payments, payments in kind, or such other payments as the State agency may specify. . . ." Participating states are thus not obligated to provide any specific kinds of emergency relief but may choose, each in

its own discretion, the type[s] of aid to be made available. This area of state discretion has been recognized even by the decisions in *Williams* v. *Wohlgemuth,* 540 F.2d 163, 169 (3d Cir. 1976) and *Mandley* v. *Trainor,* 523 F.2d 415, 420 (7th Cir. 1975). Surely this Congressional delegation of discretion to the states respecting the types of assistance to be made available is evidence that Congress never intended that participating states must provide emergency assistance to avoid the destitution of all individuals who, due to an emergency, are "without resources." It makes little sense to mandate such a broad base of eligibility coverage, while at the same time permitting state discretion as to the types of aid to be made available. Under such an arrangement, it is not inconceivable that an individual "eligible" for assistance pursuant to the presumably binding criteria would nevertheless remain unaided simply because the state had not chosen to make available as part of its plan precisely the type of assistance necessary to remedy the emergent situation. Congress undoubtedly never intended such an anomalous result.

Other than the decision as to the kinds of aid to offer, § 406(e)(1) entrusts other important elements of emergency assistance to state discretion. Thus, states may determine the period of time during which assistance is available ("not in excess of 30 days in any 12-month period"), and whether or not migrant workers are to be included. *Williams* v. *Wohlgemuth, supra,* 540 F.2d at 169; *Mandley* v. *Trainor, supra,* 523 F.2d at 420.

One additional area of state discretion goes to the heart of the issue of eligibility determination. Section 406(e)(1) assistance is available "in the case of a needy child under the age of 21" living in the home of any relative specified in § 406(a)(1). It has long been settled

that the inquiry as to who is a "needy child" lies solely within the realm of the states, which have "undisputed power to set the level of benefits and the standard of need" in programs under Title IV-A of the Social Security Act.* *Dandridge* v. *Williams*, 397 U.S. 471, 478 (1970); *King* v. *Smith*, 392 U.S. 309, 334 (1968). This Court has previously noted that the legislative history of the Social Security Act makes it clear that states have the power to determine who is a "needy child" within the context of § 406(a), *King* v. *Smith*, *supra*, 392 U.S. at 318, n. 14, and there is no reason why this power is not applicable to a § 406(e) "needy child" as well. The fact that Congress permits the states to determine who is a "needy child," what kind of emergency assistance should be made available to such a child, and for how long a period it should be available, strongly indicates an intention to permit the states to fashion emergency assistance programs to fit their individual needs within broad federal guidelines.

This conclusion is buttressed, rather than undermined, by that portion of § 406(e)(1) which must serve as the focus of the Court's analysis. That portion provides, in essence, that "emergency assistance" means state-designated relief for a state-defined "needy child . . . but only where [1] such child is without available resources," [2] the assistance is "necessary to avoid destitution of such child" or to provide living arrangements for the child, and [3] the destitution is not attributable to a refusal, without good cause, by the child or his relative to accept employment or training. It is immediately apparent that this portion does not affirmatively direct that every individual who satisfies each of the three enumerated criteria shall be eligible for emergency assistance. To the contrary, this portion of the statute is prefaced by words of limitation, the intent of which is not to set forth broad eligibility criteria against which the applications of individuals for assistance will be measured but to delineate the conditions under which federal matching funds will be made available pursuant to § 403(a)(5) and its companion definitional counterpart, § 406(e). In effect, then, this portion of the statute means that § 403(a)(5) funds are available to the states, who may disburse them as emergency assistance *but only where* necessary to avoid the destitution of a needy child who lacks available resources, provided that destitution is not the result of a refusal to accept employment. The language of the statute clearly indicates that the three specified conditions were intended to serve only as restraints upon the manner in which federal funds could be disbursed by the states. To read them otherwise, as did the court below, is to distort the clear meaning of these conditions, which are preceded by a phrase which limits the expenditure of funds rather than mandates eligibility coverage.

The legislative history of § 406(e), though admittedly scanty, provides support for this construction. The Senate Finance Committee report speaks of providing "flexible and appropriate tools to accomplish these objectives," rather than imposing stringent standards upon the states.

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* The term "needy child" should not be confused with the term "dependent child." It is well settled that "dependent child" is defined by § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), as a "needy child" who meets various conditions of eligibility for Aid to Families with Dependent Children (AFDC) set forth therein. It is equally well settled that the AFDC standard of need and level of benefits is fixed by the states. *Rosado* v. *Wyman*, 397 U.S. 397 (1970). Since the determination of who is a "needy child" is necessarily a function of the level of benfits and standard of need, the definition of that term is, in effect, also the product of state discretion.

S. Rep. No. 744, 90th Cong., 1st Sess. reprinted in [1967] *U.S. Code Cong. & Adm. News* 2834 at 3002. In describin the class of recipients for whom emergency assistance was designed, the report states:

> "The eligible families involved are those with children under 21 who either are, or have recently been, living with close relatives. The families do not have to be receiving, or eligible upon application to receive, AFDC (although they are generally of the same type), but they must be without any available resources and the payment or service must be necessary in order to meet an immediate need that would not otherwise be met." *Id.* at 3003.

Interestingly enough, the report, like the statute, employs words of limitation to describe the conditions under which federal funds may be made available. Had Congress intended to provide a definition of eligibility, it is more likely that the report would have stated, in direct terms, that "All individuals lacking available resources must be eligible." When the report and statute are considered together, and in context, it is far from clear that Congress ever attempted to define the class of beneficiaries of emergency assistance. Cf. *Ohio Bur. of Employment Services* v. *Hodory,* 45 U.S.L.W. 4544, 4547 (May, 31, 1977).

If indeed Congress intended § 406(e) to serve as a mandatory eligibility standard binding upon the states, it did so by employing extraordinarily vague terms which are unwieldy in practice. Terms such as "to avoid destitution" are so very general that, as specific criteria purportedly binding the states, they fail on account of imprecision and indefiniteness. As the Court has noted,

all welfare recipients are by hypothesis "destitute," *Goldberg* v. *Kelly,* 397 U.S. 254, 261 (1970), and the general purpose of *every* public assistance program is "to avoid destitution." Congress' use of this term in § 406(a) strongly suggests that it intended to permit the states to play the major role in designing eligibility criteria.* For if "to avoid destitution" is viewed as a Congressionally-designed eligibility standard, that standard is essentially meaningless and its utilization for that purpose would transform emergency assistance into an open-ended program by which anyone who mismanages his income or public assistance grant would be assured of further, supplementary assistance. This is a far cry from the announced Congressional desire to provide assistance to counteract the effects of bona fide emergencies which give rise to evictions, utility termination or lack of food. *S. Rep. No. 744,* 90th Cong., 1st Sess., reprinted in [1967] *U.S. Code Cong. & Adm. News* 2834 at 3002.

In *N.Y. State Dept. of Social Services* v. *Dublino,* 413 U.S. 405 (1973), the Court was presented with the issue of whether the Work Incentive Program of the Social Security Act, which requires that certain employable public assistance recipients must register for employment, preempts work rules adopted by the State of New York. The plaintiffs contended that the State rules were more

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* This reasoning has been adopted by at least one federal court. In *Baxter* v. *Minter,* 378 F.Supp. 1213 (D. Mass. 1974), it was concluded that:

> "The terms 'needy' and 'destitution' were not defined by Congress and no explicit statutory standard is available for guidance. A court can infer, therefore, that Congress used general terms in the statute when describing the poverty line of eligibility because it intended the states to supply their own precise standards of need." 378 F. Supp. at 1218.

stringent than the federal statute and that since the latter provided the exclusive mechanism for establishing work rules, the State rules were invalid. In discussing the preemption issued, the Court declared:

> "This Court has repeatedly refused to void state statutory programs, absent congressional intent to preempt them.
>
> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed." 413 U.S. at 413.

See *De Canas* v. *Bica*, 424 U.S. 351 (1976). The Court decided that this principle had direct application to federal-state public assistance programs, such as Aid to Families with Dependent Children (AFDC), especially in light of the acknowledged fact that states:

> ". . . have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *N.Y. State Dept. of Social Services* v. *Dublino, supra*, 413 U.S. at 414.

Accordingly, the *Dublino* Court held that:

> ". . . If Congress had intended to preempt state plans and efforts in such an important dimension of the AFDC program as employment referrals for those on assistance, such intentions would in all likelihood have been expressed in *direct and unambiguous language*. No such expression exists, however, either in the federal statute or in the committee reports." *Id.* (emphasis added).

Similarly, had Congress intended to preempt the field of emergency assistance by foreclosing a state role in determining the eligibility standard, it should have clearly manifested its intention in "direct and unambiguous language," and should just as succinctly have defined both the federal standard as well as the permissible areas of discretion reserved to the states. Like the Work Incentive Program, however, "no such expression exists" in § 406(e)(1) "except in the most peripheral way." 413 U.S. at 417. Indeed, the Seventh Circuit's opinion in *Mandley* v. *Trainor*, 523 F.2d 415 (7th Cir. 1975) unwittingly supports this conclusion. Even though that court held that Congress provided obligatory eligibility criteria in § 406(e)(1), it admitted that the standards set forth were "somewhat amorphous" and incapable of precise definition. 523 F.2d at 422-423. The court, however, conveniently skirted this deficiency be declaring that "This court need not establish the exact meaning of the eligibility provision of Section 606(e) because this case requires only that the validity of the specific Illinois program be determined." 523 F.2d at 422. It is submitted, in response, that the Seventh Circuit refused to delineate the eligibility criteria which it "found" in § 406(e) because given its vague and general terms, it is incredibly difficult, if not impossible, to do so with any degree of precision. When the vague "avoidance of destitution" term of § 406(e) is combined with the fact of state discretion in defining "needy child" as well as the lack of an explicit statement indicating Congress' intent to preempt this area by restricting the states' role in fashioning eligibility standards, it becomes clear that Congress

never planned to impose an eligibility standard upon the states, but that this area was to be reserved to state discretion exercisable within broadly structured guidelines. Had this been recognized by the Seventh Circuit that court would not have been faced with the dilemma of a statutory standard which it could not define.

The *Mandley* court's abdication (523 F.2d at 423) to the Secretary of Health, Education and Welfare of the responsibility for deciphering the eligibility standard of § 406(e) ignores the fact that the Secretary has, since 1969, consistently taken the position that states have the broad power to "specify the eligibility conditions imposed for the receipt of emergency assistance" as well as to "specify the emergency needs" which state plans will meet. 45 C.F.R. § 233.120(a)(1), (3). It need hardly be pointed out that the Secretary's construction of this statute "should be followed unless there are compelling indications that it is wrong. . . ." *N.Y. State Dept. of Social Services* v. *Dublino, supra,* 413 U.S. at 421 (1973); *Dandridge* v. *Williams, supra,* 397 U.S. at 481-482 (1970).

After *Burns* v. *Alcala,* 420 U.S. 575 (1975), it is clear that no special rule of construction exists by which Social Security Act eligibility provisions may be examined. Prior to *Burns,* many courts had adopted the mistaken approach that:

> ". . . persons who are arguably included in the federal eligibility standard must be deemed eligible unless the Act or its legislative history clearly exhibits an intent to exclude them from coverage, in effect creating a presumption of coverage when the statute is ambiguous." 420 U.S. at 580.

Recognizing that such a rule represented a "departure from ordinary principles of statutory interpretation" unsupported by its prior decisions, the Court declared that proper analysis should proceed according to the following principle:

> "*[O]nce the federal standard of eligibility is defined,* a participating State may not deny aid to persons who come within it in the absence of a clear indication that Congress meant the coverage to be optional. The method of analysis used to define the federal standard of eligibility is no different from that used in solving any other problem of statutory construction." *Id.* (emphasis added).

Thus, a necessary first step in eligibility analysis is to isolate and define the standard of eligibility. It may not merely be presumed that an eligibility standard exists, and then further presumed that an individual is eligibile absent any language indicating exclusion. The *Mandley* court's analysis failed to follow these principles, because it nowhere defined the federal eligibility standard. Until such a definition is presented, courts which compare state emergency assistance plans against § 406(e) for the purpose of isolating possible conflicts are merely indulging in question-begging exercises. To date, neither Congress nor the courts have yet "defined" the elusive standard of § 406(e).

The *Mandley* court's holding (523 F.2d at 422) was bottomed on the Court's decisions in the line of cases which includes *King* v. *Smith, supra,* 392 U.S. 309, and *Townsend* v. *Swank,* 404 U.S. 282 (1971), each of which hold that, by virtue of § 402(a)(10) of the Act, 42 U.S.C. § 602(a)(10), federal participation in state AFDC programs is conditional on the state's offering benefits to all persons who are eligible under federal standards. Thus, all individuals who meet the federal definition of "de-

pendent child," § 406(a) of the Act, 42 U.S.C. § 606(a), and who are "needy" under state standards, must be granted AFDC benefits according to § 402(a)(10). See *Burns* v. *Alcala*, 420 U.S. 575, 578 (1975). For instance, when Alabama attempted to deny AFDC assistance by expanding the definition of "parent" to include any male living in the household, *King* v. *Smith, supra,* and when California broadened the concept of "parent" to include a "male assuming the role of a spouse," *Lewis* v. *Martin,* 397 U.S. 552 (1970), the Court had little difficulty in striking them down. Likewise, it struck down an Illinois regulation denying AFDC to otherwise eligible students who attended college, *Townsend* v. *Swank, supra,* and similarly disapproved of the California policy which specified that a father absent from the home on account of military service was not "continuously absent" for the purpose of § 406(a). *Carleson* v. *Remillard,* 406 U.S. 598 (1972).

These holdings are inapplicable here, however, since § 402(a)(10) by its very terms is not broad enough to encompass § 406(e), and "there is no parallel requirement in the statute that emergency assistance—whose definition and funding provisions are entirely separate from those of AFDC—be paid to all eligible individuals." *Williams* v. *Wohlgemuth, supra,* 540 F.2d at 169. Thus, contrary to the *Mandley* court's conclusion, it may not be gainsaid that the *Townsend* line of cass, by themselves, require a holding that a state must provide emergency assistance to all persons facing an emergency, regardless of its cause. *Williams* v. *Wohlgemuth, supra,* 540 F.2d at 169.

> "Such a broad-based eligibility standard does not appear to have been imposed upon the states expressly by the statutory amendments creating the emergency assistance program." *Id.*

For similar reasons, the so-called Townsend regulation, 45 C.F.R. § 233.10(a)(1)(ii), which is merely the HEW codification of the holding in *Townsend* v. *Swank,* is also inapplicable to the instant case. This regulation, relied upon in both *Mandley* (523 F.2d at 421) and *Williams* v. *Wohlgemuth, supra,* 540 F.2d at 170, provides:

> "(ii) A State may:
>
> (A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorized more limited coverage;" 45 C.F.R. § 233.10(a)(1)(ii)(A).

It is submitted that the *Burns* principle is just as applicable to this regulation as it is to the *Townsend* holding. Thus, before a state may limit "coverage," it must be determined that the federal statute, in the first instance, does indeed provide coverage through a defined eligibility standard. Again, no such standard has yet been defined or identified because none exists.

Aside from the fact that § 402(a)(10) is unrelated to § 406(e), there is an even more basic reason why the *King-Townsend* holdings should not be extended to the area of emergency assistance. The *King-Townsend* cases recognize that the state fiscal resources appropriated for public assistance are finite and that whether those limited resources will provide effective assistance to needy people is a function of both the breadth of the class of eligible recipients, as well as the existing standard of need and level of benefits paid. In allocating their limited funds to expanding caseloads, the states, as a result of these holdings, are precluded from reducing the number of families eligible for assistance. Thus, adjustment of the standard of need and level of benefits paid is the only

means by which states may operate programs such as AFDC within the limitations imposed by their budgets. While such a benefit reduction risk, resulting in a lesser amount of benefits per capita being received by a greater amount of recipients, may be acceptable in AFDC, it is unrealistic when applied to emergency assistance. For if states must thinly spread their limited funds among all those who are "destitute" and "without available resources," the result will surely be that no recipient will receive enough to begin to alleviate his emergency circumstances, a situation which can hardly be said to have been within Congress' contemplation. Moreover, given the choice of an "all or nothing" adoption of a federal emergency program, "states willing to adopt the program in partial form might choose to forego it entirely," as at least one state apparently has done. *Lupu, Welfare and Federalism: AFDC Eligibility Policies and the Scope of State Discretion,* 57 B.U.L. Rev. 1, 22 (1977). Because of the limited nature of the emergency assistance program, this risk of benefit reduction posed by the rigid imposition of vague eligibility criteria is much greater for emergency assistance than for basic AFDC. *Id.*

In summary, the language of § 406(e), which after all exists solely as a definition of emergency assistance for the purposes of § 403(a)(5), a funding provision, does not explicitly mandate that any particular class of individuals shall be eligible for emergency aid. All the section does is to provide general guidelines within which federal funds may be spent by the states. Most importantly, it does not require or even encourage the states to spend such funds up to the outer limits of those guidelines. Rather, implicit in both § 403(a)(5) and § 406(e) is that state discretion will be exercised to design a program of emergency assistance tailored to the specific needs of the local populace. The Secretary of Health, Education and Welfare has endorsed this construction from the outset, and no definitive proof, whether by statute or legislative history, indicates that Congress intended otherwise.

CONCLUSION

It is respectfully submitted that the Court of Appeals erred by holding that § 406(e) contains a federal standard of eligibility. Proper construction of § 403(a)(5) and § 406(e) warrants a finding that no federal eligibility standard exists but that such matters were reserved to state discretion. Wherefore, the decision below should be reversed.

Respectfully submitted,

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